

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In Re: KEYSTONE ENVIRONMENTAL
SERVICES, INC.

Debtor.

Bankruptcy Petition: 04-24279-tmt

SETTLEMENT AGREEMENT

WHEREAS, on or about August 12, 2004, Keystone Environmental Services, Inc. ("Debtor") filed a petition for reorganization under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101, et seq., (the "Bankruptcy Code"); and

WHEREAS, on or about October 26, 2004, the Debtor herein moved to convert its bankruptcy to a liquidation under Chapter 7 of the Bankruptcy Code; and

WHEREAS, on or about December 3, 2004, Debtor's motion to convert its bankruptcy to a liquidation under Chapter 7 of the Bankruptcy Code was granted; and

WHEREAS, on or about November 1, 2004, the United States, on behalf of the United States Environmental Protection Agency ("EPA") ("the United States"), filed a Proof of Claim against the Debtor, and on or about April 21, 2005, filed a Supplementary Proof of Claim (collectively "EPA-POC"); and

WHEREAS, the EPA-POC asserts a general unsecured claim, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 6901 et seq., for at least \$2 million for unreimbursed environmental response costs incurred by the United States at the Malvern Superfund Site ("the Malvern Site"), located in

Chester County, Pennsylvania, and at the Spectron Superfund Site ("the Spectron Site"), located in Cecil County, Maryland (collectively, the "EPA Claim"); and

WHEREAS, the EPA-POC is based upon the allegations that the Debtor is liable under CERCLA to the United States for all costs incurred and to be incurred in responding to the release or threatened release of hazardous substances at the Malvern and Spectron Sites (collectively, "the Sites"); and

WHEREAS, on or about April 21, 2005, the Chemcene Site Defense Group and its Members ("CSDG"), filed a Proof of Claim against the Debtor ("CSDG-POC"); and

WHEREAS, the CSDG-POC asserts a general unsecured claim, pursuant to CERCLA, for at least \$3 million for unreimbursed environmental response costs incurred or to be incurred by the CSDG at the Malvern Site ("the CSDG Claim"); and

WHEREAS, on or about April 21, 2005, the Galaxy/Spectron Group and its Members (collectively, "GSG"), filed a Proof of Claim against the Debtor ("GSG-POC"); and

WHEREAS, the GSG-POC assert a general unsecured claim, pursuant to CERCLA, for \$35,094.67 for unreimbursed environmental response costs incurred or to be incurred by the GSG at the Spectron Site ("the GSG Claim"); and

WHEREAS, the Parties to this Superfund Settlement Agreement ("the Agreement"), without admission of liability by any Party, desire to settle, compromise, and resolve the EPA Claim, the CSDG Claim, and the GSG Claim;

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration receipt of which is hereby acknowledged;

IT IS HEREBY STIPULATED and agreed to, by and between the Parties hereto, subject

to approval by the Bankruptcy Court pursuant to Bankruptcy Rule 9019, as follows:

I. DEFINITIONS

1. The term "Related Persons" means Ellis Block, Jonathan Simon, Metuchen Realty Acquisition LLC, Keystone-Block Transportation Company, Huller Lane Corporation d/b/a Simon Eastern Corporation, Huller Domestic Corporation, Huller International, Inc., Reading Domestic Corporation, Reading International, Inc., Global Environmental Services, Inc., Spectrum Environmental Sciences, Inc., United Waste Solutions, Inc., Royal Green Corporation, Block Family Trust -- Rance Block and Jana R. Baker Trustees, Wroxham Family Partners, Ltd., Brownfield Realty, Ltd., BRHC, LLC, Styertowne Acquisition Company, LLC, Planet Emu, Inc., Block Industries, Inc., Kettle Point Partnership, Kettle Point Joint Venture, Non-Ferrous Metal Joint Venture and FTI Joint Venture, and their partners or members, as well as their predecessors, successors, subsidiaries, holding companies, parent companies and affiliates, and all present or former employees, agents, assigns, officers, directors, shareholders, attorneys or representatives thereof. "Related Persons" does not include, and expressly shall not include, Simon Wrecking, Inc., Simon Resources, Inc., and Mid-States Trading Company, Inc.

2. The term "Bankruptcy Trustee" means Mary T. Martin, Trustee of Estate of Debtor Keystone Environmental Services, Inc., as well as the Bankruptcy Trustee's successors.

3. With respect to the CSDG Claim and the GSG Claim, the term "Claim" means any past, present or future claims, demands, suits, actions, causes of action, obligations or liabilities of any kind, including, but not limited to, environmental claims brought pursuant to the comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 6901, *et seq.*, the Resource Conservation Recovery Act ("RCRA"), 42 U.S.C. §6901, *et*

seq., or any other applicable environmental law or statute, whether known or unknown, anticipated or unanticipated, accrued or unaccrued, fixed or contingent, that have been or may be asserted by or on behalf of any party, person or entity, including, but not limited to, cross-claims, counterclaims, third party claims, rights, requests, suits, lawsuits, administrative proceedings, notices, arbitrations, causes of action or orders.

4. With respect to the EPA Claim, the term "Claim" means any past, present, or future monetary demands, suits, actions, causes of action, obligations or liabilities relating to the Malvern and Spectron Sites, brought pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601, *et seq.*, or the Resource Conservation Recovery Act ("RCRA"), 42 U.S.C. § 6901, *et seq.*, that have been or may be asserted by or on behalf of the United States, including, but not limited to: cross-claims, counterclaims, third party claims, rights, requests, suits, lawsuits, administrative proceedings, notices, arbitrations, causes of action, or orders.

II. PAYMENTS, RELEASES, AND RESERVATIONS

5. This Agreement between and among the Bankruptcy Trustee, the Debtor and the Related Parties shall be subject to the Bankruptcy Court's approval in an action entitled *Mary T. Martin, Trustee of the Estate of Keystone Environmental Servs., Inc. v. Block Family Trust, et al*, Adversary No. 05-2211 (Bankr. E.D. Pa., June 17, 2005) (the "Adversary Proceedings"), filed in *In Re: Keystone Environmental Services, Inc.*, Bankruptcy Petition No. 04-24279-tmt (Bankr. E.D. Pa) (the "Bankruptcy Case"). The Parties understand, agree and acknowledge that this Agreement and all payments contemplated herein are subject to Bankruptcy Court approval, and that the Bankruptcy Trustee will only make all payments required herein if the Bankruptcy Court

authorizes such payments. If this Agreement is not authorized and approved by the Bankruptcy Court, this Agreement shall be of no force and effect, and no payments contemplated herein shall be required to be made to any Party. Also, if this Agreement is not authorized and approved by the Bankruptcy Court, then nothing herein shall be deemed an admission of any fact or waiver of any right of any Party with respect to the matters contained herein.

The EPA Claim

6. The EPA Claim shall be allowed as an unsecured claim in an amount sufficient to guarantee the payment of \$233,200, and the Bankruptcy Trustee will pay \$233,200 to EPA on behalf of the Debtor, which shall represent full payment of the EPA Claim. Distributions received by EPA will be deposited in site-specific special accounts within the EPA Hazardous Substance Superfund, to be retained and used to conduct or finance response actions at, or in connection with, the particular site for which a Claim has been allowed, including, but not limited to, EPA's oversight costs.

7. The Bankruptcy Trustee shall pay the EPA Claim as set forth in Paragraph 6 of this Agreement within 30 days after approval of this Agreement by the Bankruptcy Court. Payment shall be made by Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice lockbox bank, referencing CERCLA Number 90-11-3-1731/7, in accordance with instructions provided by the United States to the Debtor after execution of this Agreement. Any EFTs received at the U.S. D.O.J. lockbox bank after 11:00 A.M. (Eastern Time) will be credited on the next business day. Only the amount of cash received by EPA under this Agreement for EPA's allowed unsecured Claim, and not the total amount of the allowed EPA Claim, shall be credited by EPA to its accounts for the Sites. In accordance with the distribution of payment

proceeds set forth in Paragraph 7 of this Agreement, EPA shall credit the payment amount of \$233,200 as follows: \$208,200 to be applied to the Malvern Site; \$25,000 to be applied to the Spectron Site. Such credits shall reduce the liability of non-settling potentially responsible parties to EPA for the Sites by the amount of the credits.

8. In consideration of the payment that will be made to the EPA under the terms of this Agreement, and except as provided in Paragraph 9 of this Agreement:

(A) The United States covenants not to bring a civil action or take administrative action against the Debtor pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606, 9607, and Section 7003 of the Resource Conservation Recovery Act, 42 U.S.C. § 6973, for Claims relating to the Malvern and Spectron Sites.

(B) The United States also covenants not to sue, assert Claims or take administrative action against Related Persons pursuant to Sections 106 and 107(a) of CERCLA relating to the Malvern and Spectron Sites provided: (i) the Related Person is liable solely based upon the Related Person's alleged affiliation to Debtor, (ii) the Related Person's liability is based solely upon or is derived from the Debtor's liability at the Malvern and Spectron Sites under Section 107(a)(3) or (4) of CERCLA, and (iii) the covenant shall be effective only to the extent of such liability of Debtor.

(C) Nothing in this Agreement shall be construed to limit or otherwise waive any claims the United States may have against any Related Persons in connection with the Malvern and Spectron Sites based upon: (a) any alleged relationship that a Related Person may have to any potentially responsible party other than Debtor, (b) any alleged liability relating to any transaction involving Simon Wrecking, Inc., Simon Resources, Inc., or Mid-State Trading

Company, Inc., (c) any liability of Keystone-Block Transportation Co., incurred prior to December 10, 1982, (d) any alleged liability of a Related Person for whom the Debtor arranged for the disposal, treatment, or transport of hazardous substances owned or possessed by such Related Person, or accepted hazardous substances owned or possessed by such Related Person for transport to the Sites, as defined in CERCLA Section 107(a)(3) and (4), 42 U.S.C. §§ 9607(a)(3), (4), or (e) any alleged liability of a Related Person based upon business activities involving the disposal, treatment, or transport of hazardous substances at or to the Malvern and Spectron Sites by such Related Person, which activities did not include the Debtor's participation.

9. The covenant not to sue set forth in Paragraph 8 of this Agreement does not pertain to any matters other than those expressly specified therein. The United States reserves, and this Agreement is without prejudice to, all rights against the Debtor and Related Persons with respect to all other matters, and specifically with respect to: (i) liability for damages for injury to, destruction of, or loss of natural resources, (ii) liability for response costs that have been or may be incurred by federal agencies which are trustees for natural resources, (iii) claims based on a failure by the Debtor to meet a requirement of this Agreement, and (iv) claims relating to any site other than the Malvern and Spectron Sites.

10. Upon receipt by the United States of Debtor's payment in full, the United States will be deemed to have discharged and withdrawn the EPA Claim against the Debtor in the Bankruptcy Proceeding. The United States also will be deemed to have agreed that the EPA Claim and EPA-POC have been fully satisfied and discharged, and that the EPA Claim against the Debtor and the Related Parties with respect to the Malvern and Spectron Sites are discharged

and released with prejudice, unless such claims are otherwise reserved under this agreement.

11. With regard to claims for contribution against the Debtor and Related Persons for matters addressed in this Agreement, except as may be limited by Paragraphs 8 and 9 of this Agreement and subject to the fulfillment of Debtor's obligations under Paragraphs 13 and 14 of this Agreement, the United States agrees that the Debtor and Related Persons are entitled to such protection from contribution actions or claims as is provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2).

12. Notwithstanding any provisions of this Agreement to the contrary, the Debtor and Related Parties reserve any rights they may have to assert that all Claims that are not specifically reserved in this Agreement are barred by this Agreement or by the bar date of the bankruptcy proceeding. The United States reserves any right it may have to assert that all claims that are not specifically released by this Agreement are otherwise reserved.

13. Nothing in this Agreement shall be construed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611 or 40 C.F.R. § 300.700(d).

The CSDG Claim

14. The CSDG Claim shall be allowed as an unsecured claim in an amount sufficient to guarantee the payment of \$206,800, and the Bankruptcy Trustee will pay \$206,800 to the CSDG on behalf of the Debtor, which shall represent full payment of the CSDG Claim.

15. Within 30 days after approval of the Agreement by the Bankruptcy Court, the Bankruptcy Trustee shall pay in full to the CSDG by transferring \$206,800 to the Deutsche Bank Trust Company Americas, ABA: 021-001-033, Account # 01419647, Attention: Michael

Fradkin; or by sending by overnight mail a check for \$206,800 (made payable to the "Chemclene Site Defense Group") to the Chemclene Site Defense Group, c/o Mark A. Stevens, Esquire, Liaison Counsel, Langsam Stevens & Silver LLP, 1616 Walnut Street, Suite 1700, Philadelphia, PA 19103.

16. Distributions to the CSDG will be deposited in the CSDG Qualified Settlement Fund. The CSDG represents and warrants that it will credit its payment to the CSDG Qualified Settlement Fund in accordance with the terms of that Settlement Fund.

17. In consideration of the payments or distributions that will be made to the CSDG under the terms of this Agreement, the CSDG hereby releases, discharges and covenants not to bring any action asserting Claims against the Debtor relating to the Malvern Site, or otherwise barred by the satisfaction and discharge of the CSDG-POC. The CSDG also covenants not to sue, assert Claims or take action against Related Persons relating to the Malvern Site, or otherwise barred by the satisfaction and discharge of the CSDG-POC provided: (i) the Related Person is liable solely based upon the Related Person's alleged relationship to Debtor, (ii) the Related Person's liability is based solely upon or is derived from the Debtor's liability under Section 107(a)(3) or (4) of CERCLA, and (iii) the covenant is effective only to the extent of such liability of Debtor.

18. Nothing in this Agreement shall be construed to limit or otherwise waive any Claims the CSDG may have against any Related Person based upon: (i) any alleged relationship a Related Person may have to any potentially responsible party other than Debtor; (ii) any alleged liability or any Claims relating to any transaction or activity involving Simon Wrecking, Inc., Simon Resources, Inc., or Mid-State Trading Company, Inc., or (iii) any alleged liability of a

Related Person for whom the Debtor arranged for the disposal, treatment, or transport of hazardous substances owned or possessed by such Related Person, or accepted hazardous substances owned or possessed by such Related Person for transport to the Malvern Site, as defined in CERCLA Section 107(a)(3) and (4), 42 U.S.C. §§ 9607(a)(3), (4).

19. Upon receipt by the CSDG of payment in full of the amount due to the CSDG under the Agreement, the CSDG Claim will be deemed to have been discharged and withdrawn in the Bankruptcy Proceeding. The CSDG also will be deemed to have agreed that the CSDG Claim and CSDG-POC have been fully satisfied, and that these CSDG Claims are discharged and released with prejudice.

20. Within 30 days after its receipt of the payment in full, the CSDG also shall dismiss, with prejudice, all Claims against Debtor in *Action Manufacturing Co., Inc. et al. v. Simon Wrecking Company, et al.*, Civil Action No. 02-8964, currently pending before Judge Brody in the federal District Court for the Eastern District of Pennsylvania ("the Litigation").

21. Within 10 days after the CSDG has moved to dismiss all claims against Debtor in the Litigation, Debtor shall dismiss all counterclaims and crossclaims asserted by it in that action. Further, Debtor hereby releases and forever discharges the CSDG, and each of its successors and assigns, with regard to all counterclaims asserted or that could have been asserted in the Litigation and with regard to the Malvern Site, and assigns to the CSDG, and each of its successors and assigns, all Claims of Debtor for response costs and cleanup costs of any kind at or related to the Malvern Site.

The GSG Claim

22. The GSC Claim shall be allowed as an unsecured claim in an amount sufficient to

guarantee the payment of \$22,500, and the Bankruptcy Trustee will pay \$22,500 to the GSC on behalf of the Debtor, which shall represent full payment of the GSC Claim.

23. Within 30 days after approval of the Agreement by the Bankruptcy Court, the Bankruptcy Trustee shall pay in full to the GSG by transferring \$22,500 to Deutsche Bank Trust Company Americas, ABA 021-001-033, Account # 01419647-CTAS, Reference Jennifer Davis, or by sending by overnight mail a check for \$22,500 (made payable to the "Galaxy/Spectron Defense Group") to the Galaxy/Spectron Defense Group, c/o Adam H. Isenberg, Esquire, Liaison Counsel, Saul Ewing, LLP, Centre Street West, 38th Floor, 15 Market Street, Philadelphia, PA 19102.

24. Distributions to the GSG will be deposited in the GSG Settlement Fund. The GSG represents and warrants that it will credit its payment to the GSG Settlement Fund in accordance with the terms of that Settlement Fund.

25. In consideration of the payments or distributions that will be made to the CSDG under the terms of this Agreement, the GSC hereby releases, discharges and covenants not to bring any action asserting Claims against the Debtor relating to the Spectron Site, or otherwise barred by the satisfaction and discharge of the GSC-POC. The GSC also covenants not to sue, assert Claims or take action against Related Persons relating to the Spectron Site, or otherwise barred by the satisfaction and discharge of the GSC-POC provided: (i) the Related Person is liable solely based upon the Related Person's alleged relationship to Debtor, (ii) the Related Person's liability is based solely upon or is derived from the Debtor's liability under Section 107(a)(3) or (4) of CERCLA, and (iii) the covenant is effective only to the extent of such liability of Debtor.

26. Nothing in this Agreement shall be construed to limit or otherwise waive any Claims the CSDG may have against any Related Person based upon: (i) any alleged relationship a Related Person may have to any potentially responsible party other than Debtor; (ii) any alleged liability or any Claims relating to any transaction or activity involving Simon Wrecking, Inc., Simon Resources, Inc., or Mid-State Trading Company, Inc., or (iii) any alleged liability of a Related Person for whom the Debtor arranged for the disposal, treatment, or transport of hazardous substances owned or possessed by such Related Person, or accepted hazardous substances owned or possessed by such Related Person for transport to the Spectron Site, as defined in CERCLA Section 107(a)(3) and (4), 42 U.S.C. §§ 9607(a)(3), (4).

27. Upon receipt by the GSG of payment in full of the amount due to GSG under the Agreement, the GSG will be deemed to have discharged and withdrawn the GSG Claim in the Bankruptcy Proceeding. The GSG also will be deemed to have agreed that the GSG Claim and GSG-POC have been fully satisfied and discharged, and that the GSG Claim is discharged and released with prejudice.

III. GENERAL PROVISIONS

28. The Debtor covenants not to sue and agrees not to assert any claims or causes of action against the United States with respect to the Malvern and Spectron Sites, including, but not limited to: (i) any direct or indirect claim for reimbursement from the Hazardous Substance Superfund, (ii) any claims for contribution against the United States, including its departments, agencies, or instrumentalities, and (iii) any claims arising out of response activities at the Malvern and Spectron Sites.

29. To the full extent of the CSDG and the GSG respective releases of the Debtor

under this Agreement, the Debtor covenants not to sue and agrees not to assert any claims or causes of action against CSDG and GSG with respect to the Malvern and Spectron Sites, including but not limited to: (i) any direct or indirect claim for reimbursement from the Hazardous Substances Superfund, (ii) any claims for contribution against the CSDG or GSG, including its departments, agencies or instrumentalities, and (iii) any claims arising out of response activities at the Malvern and Spectron Sites. The Debtor reserves its claims to the extent that any claims have been reserved in this Agreement by the CSDG or GSG with respect to the Malvern and Spectron Sites.

30. Nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Agreement, except as may be provided in this Agreement.

31. This Agreement will also be lodged with the Court and submitted for public comment following notice in the Federal Register. The United States reserves the right to withdraw or withhold its consent if the public comments regarding the Agreement disclose facts or considerations which indicate that the Agreement is inappropriate, improper, or inadequate.

32. Debtor agrees to exercise its best efforts to obtain the approval of the Bankruptcy Court pursuant to Bankruptcy Rule 9019.

33. This Agreement represents the complete agreement of the Parties hereto on the matters referred to herein and supersedes all prior agreements, understandings, promises and representations made by the Parties concerning the subject matter hereof.

34. This Agreement may not be amended, modified, or supplemented, in whole or in part, without the prior written consent of the Parties and the approval of the Bankruptcy Court.

35. This Agreement may be executed in counterparts with facsimile signatures, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. The Agreement shall be deemed executed upon delivery of all facsimile signatures via telecopier.

36. The Parties hereto and the representatives signing on behalf of each Party hereby warrant and represent that they are authorized to enter into this Agreement and bind the Parties to the terms of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their signatures
below.

FOR THE UNITED STATES OF AMERICA:

MATTHEW J. MCKEOWN
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

W. BENJAMIN FISHEROW
Deputy Section Chief
Environment and Natural Resources Division
Environmental Enforcement Section

ROBERT E. LEFEVRE, Esq.
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
(202)616-8860
Fax: (202) 616-6583
Robert.Lefevre@usdoj.gov

DONALD S. WELSH
Regional Administrator, Region III
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103-2029

JOAN A. JOHNSON
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103-2029

FOR KEYSTONE ENVIRONMENTAL
SERVICES, INC.:

By: _____

Name of Officer (please type or print)

Signature of Officer

Title